

Letter of Findings: 01-20200450
Individual Income Tax
For the Tax Year 2019

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual who lived in Indiana but worked in a reciprocal state is entitled to a credit for county withholding tax remitted to the reciprocal state to the extent it brings the Indiana local income tax to zero.

ISSUE

I. Income Tax-County Withholding Tax Credit.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-1; IC § 6-3-3-3; IC § 6-3.6-8-6; IC § 6-3-1-3.5; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Income Tax Information Bulletin 28 (November 2016); [45 IAC 3.1-1-76](#).

Taxpayer protests the increase of her 2019 Indiana income tax which resulted from the disallowance of her claimed county withholding tax credit.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who earned income from employment in Kentucky. Taxpayer filed her 2019 Indiana income tax return reporting a small amount due after claiming a credit for locality taxes paid in Kentucky. The Indiana Department of Revenue ("Department") denied the credit based on a lack of ability to verify Taxpayer's wages. The credit denial resulted in additional income tax due. Taxpayer filed a timely protest in which she indicated her decision to bypass the administrative hearing process. Thus, this Letter of Findings is based on information provided by Taxpayer with her protest and the Department's own files. Additional facts will be provided as necessary.

I. Income Tax- County Withholding Tax Credit.

DISCUSSION

Taxpayer claimed a credit on her 2019 Indiana income tax return for income taxes paid to a Kentucky locality. The Department denied the credit based on an inability to verify Taxpayer's wages and withholdings. Taxpayer protests and argues that the credit should be allowed because Indiana and Kentucky are reciprocal states.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes an adjusted gross income tax on all residents. IC § 6-3-2-1(a). To efficiently and effectively compute what is considered the resident-taxpayer's Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to

calculate what would be his or her Indiana income tax after applying certain additions and subtractions to that starting point, with modifications thereafter.

Indiana law also permits Indiana resident-taxpayers to claim an income tax credit - not exceeding their Indiana income tax due - for the taxes he or she is required to pay to other states. IC § 6-3-3-3(a). Similarly, when the resident-taxpayer of an Indiana county is required to pay local income tax to a county of another state, the taxpayer is entitled to a tax credit. IC § 6-3.6-8-6(a) provides:

Except as provided in subsection (b), if for a particular taxable year a local taxpayer is liable for an income tax imposed by a county, city, town, or other local governmental entity located outside Indiana, that local taxpayer is entitled to a credit against the tax liability imposed under this article for that same taxable year. The amount of the credit equals the amount of tax imposed by the other governmental entity on income derived from sources outside Indiana and subject to the tax imposed under this article. However, the credit provided by this section may not reduce a local taxpayer's tax liability to an amount less than would have been owed if the income subject to taxation by the other governmental entity had been ignored. (Emphasis added).

In addition, Indiana has entered into reciprocal agreements with various states. Under the agreed reciprocity, an Indiana resident-taxpayer who earns "income consisting of salaries, wages, and commissions from states [such as, Kentucky,] with which Indiana has a reciprocal tax agreement must report all such income as if it were from Indiana." [45 IAC 3.1-1-76](#). Reciprocity, however, does not automatically transfer the withholding tax credits between reciprocal states. "*Credit cannot be taken for any taxes withheld by or paid to any of these states in connection with salaries, wages, or commissions received from such states. If tax has been withheld by any of these states, a claim for refund should be filed with the state which withheld the taxes.*" *Id.* (Emphasis added).

This rule is repeated in Indiana Income Tax Information Bulletin #28 which states:

Taxpayers may be subject to individual income tax by both their state of residence and the state from which the income is derived. The state of Indiana has entered into agreements with several states to eliminate the requirement of paying tax to two states on the same income.

...

Five states have a reciprocal agreement with the state of Indiana. They are Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin. All salaries, wages, tips, and commissions earned in these states by an Indiana resident must be reported as if they were earned in Indiana. A credit cannot be taken for any taxes withheld by or paid to any of these states in connection with income from salaries, wages, tips, and commissions. If taxes have been withheld or paid to any of these states, a claim for refund should be filed with that state by filing that particular state's income tax form for nonresidents.

Income Tax Information Bulletin 28 (November 2016), 20161228 Ind. Reg. 045160560NRA.

The authorities referenced to above pertain to state income tax. However, when it comes specifically to county income tax credits, "[a]ll Indiana residents who are subject to a county income tax and are also required to pay income taxes to a locality outside Indiana are allowed a credit against their Indiana county tax liability . . . The allowable credit is equal to the lesser of: [t]he amount of income tax actually paid to a locality in another state; [t]he amount of adjusted gross income taxed by the locality outside of the state of Indiana multiplied by the county rate to which the taxpayer is subject; or [t]he amount of county tax due on the Indiana return." Income Tax Information Bulletin 28 (November 2016).

Therefore, Taxpayer is correct in that she can take the Kentucky locality tax as a credit against her Indiana county taxes. However, she can only take the credit to offset her Indiana county tax to zero. The W2 statements provided by Taxpayer show that her employer withheld Kentucky county tax on her wages, but not Indiana local tax. Taxpayer calculated and reported Indiana county tax on her 2019 return and claimed the Kentucky locality tax as a credit against the Indiana county tax. The Indiana county tax Taxpayer reported exceeds Taxpayer's Kentucky county tax and locality taxes withheld, thus Taxpayer is entitled to use the full Kentucky county tax as a credit against her Indiana county tax, as she did on her 2019 return. The Department does not disagree with Taxpayer's calculation of Indiana county tax or the amount of the Kentucky local tax. Rather, the Department disallowed the credit due to an inability to verify the tax withheld. As a part of the protest process, Taxpayer has supplied documentation to support the numbers claimed on her 2019 return, thus Taxpayer is sustained.

FINDING

Taxpayer's protest is sustained.

February 2, 2021

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